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IN THE

SUPREME COURT OF THE UNITED STATES

NO. 82-1408

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ROSS MAGGIO,

Petitioner

Versus

JOHN FULFORD,

Respondent

---

ON WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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# BRIEF IN OPPOSITION TO

# PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

I. Whether issues raised in the Petition for Writ of Certiorari warrant the exercise of certiorari jurisdiction under Rule 17.

II. Whether the United States Court of Appeals for the Fifth Circuit was correct in overruling a finding of fact by the State Trial Court that the Respondent was mentally competent to stand trial.

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## OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit in this case below, under Case Number 80-3932, is set out in petitioner's Appendix, including the Memorandum Opinion by the Federal District Court, Number 76-0748. Additionally, the Court of Appeals granted the petitioner's motion for a stay of mandate, which order is also included in the Appendix compiled by petitioner.

## STATEMENT OF THE CASE

Respondent incorporates petitioner's statement of the case and facts, and includes this additional relevant information. On March 1, 1982, the morning respondent's trial was to begin, counsel for respondent filed a motion to appoint a sanity commission to make a determination as to whether the respondent was competent to assist counsel in his defense. At the hearing of this motion respondent presented one witness, a psychiatrist, who had examined the respondent the previous date. The psychiatrist testified, that in his opinion, the respondent suffered from paranoid delusions which kept him from adequately assisting in his own defense. The State Trial Court denied the ensuing defense motion without hearing any evidence or rebuttal testimony to contradict the psychiatrist's opinion, nor did the Trial Judge interrogate the respondent in an attempt to personally determine respondent's mental competency to stand trial. It is this motion, the subsequent hearing and court ruling that form the core of the issue in question.

## SUMMARY OF ARGUMENT

I.

THE ISSUE RAISED IN PETITION FOR WRIT OF CERTIORARI DOES NOT FOLLOW WITHIN THE CHARACTER OF REASON STATED IN RULE 17, NOR DOES PETITIONER PRESENT AN ISSUE OF SIGNIFICANT IMPORT OR NOVELTY TO WARRANT CONSIDERATION BY THIS COURT.

II.

A SPECIFIC FINDING OF FACT MADE BY THE STATE TRIAL COURT HAS A PRESUMPTION OF CORRECTNESS, HOWEVER, FEDERAL COURTS ON APPLICATION FOR HABEAS CORPUS HAVE AN OBLIGATION TO REEVALUATE THE STATE COURT'S FINDING, IF SUCH FINDING IS BASED ON INSUFFICIENT OR INADEQUATE EVIDENCE OR MATERIAL FACTS SURROUNDING THE ISSUE WERE NOT ADEQUATELY DEVELOPED. THE FACT THAT THE TRIAL COURT DENIED RESPONDENT'S MOTION FOR A SANITY COMMISSION WHERE PSYCHIATRIST TESTIFIED RESPONDENT WAS NOT COMPETENT TO ASSIST IN HIS DEFENSE, ABSENT ANY REBUTTAL EVIDENCE, CONSTITUTES CONVINCING EVIDENCE THAT THE FACTUAL DETERMINATION BY STATE COURT WAS ERRONEOUS.

## ARGUMENT

I.

Supreme Court Rule 17 remains the primary source for guidance to lawyers in determining whether to file a Petition for Writ of Certiorari, since it states "the character of reasons which will be considered" by the Court in passing upon a Petition for Writ for Certiorari. The rule states as follows:

> ".1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.
>
> (a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.
>
> (b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.
>
> (c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court...."

In the case at issue, petitioner alleges the Fifth Circuit Court of Appeals erred in failing to follow the presumption of correctness of the State Court's finding of fact. By reading of Rule 17 clearly establishes the issue raised by petitioner does not fall within its specified scope. In addition, even assuming the merit of petitioner's contention, the Supreme Court's burdens and responsibilities are too great

to permit it to review and correct every misstep made by the lower courts in the application of accepted principle. As stated in Ross v. Moffitt, 417 U.S. 600 (1974), "This court's decision...is discretionary and depends on numerous factors other than the perceived correctness the judgment we are asked to review." (At pages 616-17).

Stern and Gresman state, "While the perceived correctness of the decision below may affect or emphasize the appropriateness of review, undue concentration on the errors committed by the lower court could transform the Supreme Court into another tribunal of errors and appeals, contrary to its constitutional mission." R. Stern and E. Gresman, Supreme Court Practice at 298 (5th Ed. 1978).

Inasmuch as petitioners raise an issue inappropriate for this Court's review, respondent respectfully urges this Honorable Court to deny petitioner's request for writ of certiorari.

II.

28 USC §2254(d) provides that a finding of fact by the state court will be presumed correct, "unless the applicant shall establish or it shall otherwise appear...."

> "(1) That the merits of the factual dispute were not resolved in the state court hearing;
> (2) That the fact finding procedure employed by the state court was not adequate to afford a full and fair hearing;
> (3) That the material facts were not adequately developed at the state court hearing;...
> (6) That the applicant did not receive a full, fair and adequate hearing in the state court proceeding; or
> (7) That the applicant was otherwise denied due process of law in the state court proceeding...."

This Honorable Court in Sumner v. Mata, 449 U.S. 539, 550 (1982), stated:

> "It is clear that in adopting the 1966 amendment, Congress in Section 2254(d) intended...to establish that the findings made by the state court system shall be presumed to be correct unless one of the seven conditions specifically set forth in Section 2254(d) was found to exist by the federal habeas court. If none of those seven conditions were found to exist, or unless the habeas court concludes that the relevant

> state court determination is not 'fairly supported by the record', 'the burden shall rest upon the applicant to establish by convincing evidence that the factual determination by the state court was erroneous'." (At. page 550).

The petitioner asserts that in examining the reasons for the trial court's ruling to deny the respondent's motion for a sanity commission, the record more than fairly supports that decision. However the United States Fifth Circuit Court of Appeals has held to the contrary.

In Zapata v. Estelle, 588 F.2d 1017 (5th Cir. 1979), the court held that testimony of a medical doctor and psychiatrist that was sufficient to raise substantial doubt of the habeas corpus petitioner's competency at a trial required remand for hearing in the federal district court on the competency issue. (At page 1022).

Petitioner further contends that the trial court was not bound to agree with the examining psychiatrist's conclusions that respondent was incompetent to assist counsel in his own defense, and the decision by the trial was based entirely upon the court's actual observations of the witness.

This Court held in Pate v. Robinson, 383 U.S. 375 (1966), that while the demeanor of the defendant at trial might be relevant to the ultimate decision as to his sanity, it cannot be relied upon to dispense with a hearing on that very issue. (At page 386). The Louisiana Supreme Court has held if the issue of the accused's mental incapacity is raised by non-frivilous contentions, the trial court can satisfy itself as to whether there is reasonable ground to doubt the defendant's mental capacity to proceed by interrogating that individual. State v. Jones, 368 So.2d 1023, 1025 (La. 1979). At no time during the hearing of respondent's motion did the trial court interrogate respondent so as to enable the court to make a personal determination in regard to his competency to stand trial as required in State v. Jones, supra. (At page 1025).

At the hearing of respondent's motion for a sanity commission, counsel for respondent presented a psychiatrist who testified as follows: (State record, Volume 4, page 943).

> "As a result of - of this meeting with him, it was my preliminary opinion that the - that Mr. Fulford had paranoid delusions which kept him from adequately assisting in his own defense."

In addition to the trial court's failure to interrogate the respondent, the state did not introduce any evidence whatsoever to contradict the testimony of the psychiatrist.

At page 824, the Fifth Circuit Court of Appeals stated: (Fulford v. Maggio, 692 F.2d 354 (5th Cir. 1982))

> "Dr. McCray's testimony was unimpeached. His qualifications as a psychiatrist were unchallenged by the prosecution. Although his examination was brief, it was precisely because of this brevity that he suggested further evaluation was needed. On these facts, we believe that the state court committed constitutional error in not conducting further competency proceedings."

The totality of the evidence clearly supports the decision of the Fifth Circuit Court of Appeals that the state trial court committed constitutional error in not conducting further competency proceedings. Further, this case was properly reviewed in a habeas proceeding in that there was convincing evidence to support an erroneous finding of fact by the state trial court.

## CONCLUSION

Based on the foregoing arguments and jurisprudence, respondent respectfully urges this Honorable Court to deny this petition for writ of certiorari.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I certify that copies of this Brief in Opposition to Petition for Writ of Certiorari have been served upon Petitioners by placing a copy of same in the United States Mail, postage prepaid and properly addressed to:

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MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Pursuant to Rule 46 of the Supreme Court Rules, 28 U.S.C. and 18 U.S.C. 3006(d)(6), Respondent John Fulford asks leave to file the attached Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit without prepayment of costs and to proceed in forma pauperis. Respondent was granted leave to proceed in forma pauperis in the United States District Court and in the United States Court of Appeals and was represented by appointed counsel on appeal to the United States Court of Appeal for the Fifth Circuit.

Respectfully submitted,

BY: Irving J. Warshauer

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